

Office Action dated: June 18, 2004  
Reply filed: September 16, 2004

Applic. No. 09/592,791  
Art Unit 2644

### **REMARKS**

Applicant thanks the Examiner for the thorough consideration given the present application. Claims 1-10 are currently being prosecuted. The Examiner is respectfully requested to reconsider her rejections in view of the amendments and remarks as set forth below.

### **ENTRY OF AMENDMENT**

It is respectfully requested the present Amendment should be entered in the official file in view of the fact that the amendments automatically place the application in condition for allowance. Alternatively, if the Examiner does not agree that the application is in condition for allowance, it is respectfully requested that the present Amendment should be entered for the purpose of appeal. The changes to the specification are designed to correct previous errors and to better explain the invention. Accordingly, entry of this Amendment is considered proper.

### **TELEPHONE INTERVIEW**

Applicant notes with appreciation the telephone interview conducted with Examiner Faulk on September 15, 2004. During the interview, the Applicant pointed out to the Examiner that the present rejection included the removal of the allowability of claims which were indicated as being allowable in the previous action. Some of these claims were rejected over new art and some were rejected over existing art. Under the circumstances, the Applicant pointed out that the rejection should not have been made final. The Examiner agreed to consider the issue on the filing of the amendment.

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### **FINALITY OF THE REJECTION**

As pointed out in the telephone interview of September 15, the previous action indicated that claims 2, 3 and 7-10 would be allowable if rewritten in independent form. In the present action, claims 3 and 7 have been rejected over Fujiuchi et al. which was cited in the previous action. Also, claim 2 which was indicated as being allowable is now rejected over the combination of Fujiuchi et al. and Isuruishi which is newly cited. While claim 1 was amended in the last amendment, these changes did not require the Examiner to reconsider the allowability of these claims. Accordingly, the Applicant submits that the present rejection should not have been made final. Instead, this should be a non-final action. The Applicant requests the Examiner to reconsider the finality of this rejection.

### **ALLOWABLE SUBJECT MATTER**

It is gratefully acknowledged that the Examiner considers the subject matter of claims 8-10 as being allowable if rewritten in independent form. These claims have not yet been rewritten in independent form. It is noted that since claim 1 has been rejected under 35 USC §112 first paragraph, it is not understood how rewriting the claims in independent form could overcome this rejection as well. According, the rewriting of these claims has been deferred until that issue has been removed.

### **REJECTION UNDER 35 USC §112**

Claim 1 stands rejected under 35 USC §112 as failing to comply with the written description requirement. In particular, the Examiner objects to the claim language added to claim 1 regarding the battery being mounted on the outside of the case so as to be exposed. The Applicant submits that

this language is clearly presented in the original application. First, the Examiner appears not to have considered at all the description of the battery presented in the figures. The Examiner is directed especially to figures 2 and 4 which show the battery indicated as reference number 8. In both of these figures, the battery is mounted on top of case 2. By being mounted on top of this case, the battery is clearly exposed for easy replacement. Figure 2 also clearly shows the buzzer 3, which includes coil 4, core 5 and armature 7 as being within the case 2.

The Examiner points out that the specification indicates on page 2, line 24 that the battery is in the case. Also, the Examiner points out that in the previous line the sound generating device is mounted on the case. By way of the present amendment, the Applicant has changed this designation because it was based on a clerical error in the original application. Clearly this paragraph is in direct opposition to the figures and to the remainder of the application. In particular, the Applicant points out that this paragraph is in the summary of the invention and repeats the description of the invention found in claim 1. In comparing this paragraph with claim 1, it is clear that these descriptions are word for word the same with the exception of these two words which are reversed. The Applicant submits that this was an error in the preparation of this paragraph which has been corrected by the present amendment. The Applicant submits that this is not new matter since the remainder of the application makes it very clear that the battery is mounted on the case.

The Examiner has pointed out that other descriptions of the battery are found on page 4, line 1 and page 5, lines 20-21. These are in keeping with the remainder of the application, namely that the battery is mounted on the case. The Examiner's attention is also directed to page 4, line 1 of the original application which also indicates that the battery is mounted on the case. Other indications

that this is correct can be found by the fact that the battery is held in place by the contact plate which is offset as described in the specification, claims and figures.

The other part of the claim language added to claim 1 is that the battery is exposed. This is also clearly seen in figures 2 and 4. This is an important feature since it makes it convenient to replace the battery when such is necessary. The fact that the battery is exposed is not only clearly seen in the figures, but is highly implied by the fact that the battery is attached to the outside of the case. However, in order to give specific basis to this language in the specification, line 1 on page 4 has been amended to state that the battery is exposed. The Applicant submits that this is not new matter since this is clearly seen in the figures and is implied by the fact that the battery is mounted on the case.

#### **REJECTION UNDER 35 USC §102**

Claims 1 and 3-10 stand rejected under 35 USC §102 as being anticipated by Fujiuchi et al. (U.S. Patent 5,844,484). This rejection is respectfully traversed.

The Examiner states that the reference shows a theft preventive apparatus having a speaker housing 32 which contains a piezoelectric buzzer 21a. The Examiner indicates that these two elements are shown in figure 2. The Applicant believes that these elements are not shown in this figure but instead are shown in figure 4. The Examiner also points out that the reference includes a bottom part of the speaker housing, terminals located in the back of the terminal unit and electrode connections for the battery.

The Applicant notes that the buzzer 21a is mounted in speaker housing 32 as shown in figures 4 and 7. The speaker housing is attached to the top case 2b. As shown in figures 2A and 4,

the top case has an opening in line with the buzzer, apparently to allow the buzzer sound to be heard. The buzzer is press fit into the speaker housing 32 (column 8, lines 16 and 17). The top of the buzzer appears to extend beyond the speaker housing 32 (figure 7), apparently so that it will extend into the opening of top case 2b.

The Applicant submits that claim 1 describes a combination of elements including a case, a sound generating device mounted in the case, a battery mounted on an outside so as to be exposed, terminals provided on the case and a pair of leads connecting a pair of electrodes to the battery with the terminals. The Applicant submits that this combination of elements is not anticipated by or obviousness over this reference. The Examiner has equated the case of claim 1 with the speaker housing. However, even if this is a case, it is not seen that the sound generating device is mounted in the case. Thus, as seen in figure 7, the buzzer extends beyond the speaker housing and extends outside the top case 2b. Further, even if the battery is considered to be mounted outside the case, it is not "exposed" since it is still within bottom case 2a. Thus, the Applicant submits that this combination of elements is not seen in Fujiuchi et al. Further, the Applicant submits that it would not be obvious to modify this arrangement since the Fujiuchi et al. device is a theft preventative apparatus. That is, in such a device the battery should not be exposed since it would allow a thief to remove the battery to prevent the alarm from operating. However, in the present invention the exposing of the battery on the outside of the case allows the consumer to easily replace the battery when necessary. Accordingly, the Applicant submits that claim 1 is not obvious over this reference either. Accordingly, the Applicant submits that claim 1 is allowable.

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Claims 2-10 depend from claim 1 and as such are also considered to be allowable. In addition, each of these claims recites other features which make them additionally allowable.

Claim 2 stands rejected under 35 USC §103 as being obvious over Fujiuchi et al. in view of Isurushi (U.S. Patent 3,858,389). This rejection is respectfully traversed.

The Applicant submits that claim 2 is allowable based on its dependency from allowable claim 1. Even if the Isurushi reference does teach the feature indicated by the Examiner, it does not aid the primary reference in overcoming its deficiencies as noted above. Accordingly, the Applicant submits that this claim is also allowable.

#### **CONCLUSION**

In view of the above remarks, it is believed that the claims clearly distinguish over the patents relied on by the Examiner, either alone or in combination. In view of this, reconsideration of the rejection and allowance of all the claims are respectfully requested.

Should there be any outstanding matters that need to be resolved in the present application, the Examiner is respectfully requested to contact Robert F. Gnuse (Reg. No. 27,295) at the telephone number of the undersigned below, to conduct an interview in an effort to expedite prosecution in connection with the present application.

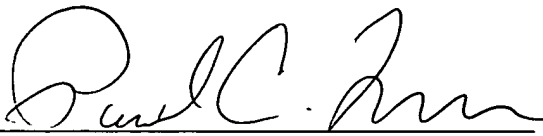
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If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment or credit any overpayment to Deposit Account No. 02-2448 for any additional fees required under 37 C.F.R. §§ 1.16 or 1.17; particularly, extension of time fees.

Respectfully submitted,

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